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Supreme Court, U.S.
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NO. 86-1607

In the Supreme Court of the United States

OCTOBER TERM, 1986

ALTON J. BAILEY,

Petitioner

VERSUS

RYAN STEVEDORING COMPANY, INC., ET AL

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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12 pp

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Ryan-Walsh Stevedoring Company, Inc. (formerly, Ryan Stevedoring Co., Inc.), certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Alton J. Bailey
Johnnie A. Jones, Esq.
Ryan-Walsh Stevedoring Company, Inc.
Mathews, Atkinson, Guglielmo, Marks & Day
Rogers Terminal and Shipping Corporation
Gardner, Robein & Healey
Louisiana Stevedores, Inc.
Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman
Ramsay, Scarlett and Company, Inc.
Baton Rouge Marine Contractors, Inc.
Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO
Baton Rouge Steamship Association

BY ATTORNEYS:
MATHEWS, ATKINSON,
GUGLIELMO, MARKS & DAY

By: _____

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Statute

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NO. 86-3604

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

ALTON J. BAILEY,

Petitioner

VERSUS

RYAN STEVEDORING COMPANY, INC., ET AL

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RYAN STEVEDORING COMPANY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The plaintiff, Alton J. Bailey, filed a civil rights action against several stevedoring companies and two local longshoremen's unions at the Port of Baton Rouge, Louisiana on March 11, 1971. On behalf of himself and "others similarly situated," the plaintiff sought injunctive relief, declaratory judgment, and back pay. The plaintiff further sought to have the all black union, Local 1830, General Longshore Workers, International Longshoremen's Association, AFL CIO, merged with the all white union, Local No. 1833. (R-1).

The case was tried on April 8, 1974 and the district court, in written reasons on April 23, 1974, found that there was no employment discrimination on the part of any of the defendants, and particularly found that plaintiff had in no way been discriminated against by any of the defendants. The district court further concluded that the claims of the plaintiff were entirely individual in nature and denied the plaintiff the class action which he had attempted to bring under Rule 23 of the Federal Rules of Civil Procedure. (R 132-47).

The court of appeals affirmed the district court in part and reversed in part. The court of appeals agreed with the district court finding that plaintiff was not the victim of individual discrimination and additionally did not have the requisites to qualify him as a representative for a class action. But the court of appeals went on to conclude that while the hiring practice of defendants dividing and allotting jobs on a 50-50 basis between the members of the two unions, which unions each had approximately the same number of members, did not result in discriminatory hiring, nevertheless the 50-50 hiring practice represented a *possible future threat* of discrimination if the numerical membership of the two unions changed, and then proceeded to remand the case to the district court with a mandate that a permanent injunction issue enjoining the continued operation of the two segregated local unions. Thus, the court of appeals agreed that the plaintiff had no meritorious individual claim, and that he could not represent anyone in this suit except himself. *Bailey v. Ryan Stevedoring Co., Inc.*, 528 F.2d 551 (5th Cir. 1976).

On remand, the district court modified the court of appeals' mandate in view of its interpretation of an intervening Supreme Court decision, and refused to order the merger of the two unions. *Bailey v. Ryan Stevedoring Co., Inc.*, 443 F.Supp. 899 (M.D. La. 1978). The court of appeals

reversed the district court and reiterated the mandate requiring the merger. *Bailey v. Ryan Stevedoring Co., Inc.*, 613 F.2d 588 (5th Cir. 1980).

On June 14, 1983, plaintiff filed a motion seeking an award of reasonable attorney's fees claiming that he was the "prevailing party" as to all defendants. All defendants except Ryan opposed the motion. By minute entry of July 19, 1984, the district court granted a motion to dismiss the claim for attorney's fees as to Rogers Terminal and Shipping Corporation, Ramsay Scarlett and Company, Inc., Louisiana Stevedores, Inc., and Baton Rouge Marine Contractors, Inc. (R 602). Ryan thereafter filed its motion to dismiss the claim for attorney's fees on July 23, 1984. On August 6, 1984, plaintiff sought an order making the July 19, 1984 minute entry a final judgment for appeal purposes since the district court had not yet ruled on the attorney's fees issue as to Ryan and the two defendant unions. (R 636). There was no additional activity in this case until July 8, 1986, when the district court rendered written reasons concluding that plaintiff was not the "prevailing party" as to all defendants and therefore denied any recovery of attorney's fees. (R 643-47).

On July 10, 1986, Judgment was entered making this a final judgment for appeal purposes as to all defendants. (R 648).

Plaintiff appealed from that judgment. (R 649).

The court of appeals affirmed.

SUMMARY OF ARGUMENT

All of the courts who have heard this case have found that plaintiff did not have a valid individual claim, and that he did not have the requisites to qualify him as a representative for a class action. Further, the court of appeals had

originally concluded that the manner in which the two segregated unions were providing and allotting jobs on a 50-50 basis *did not* result in discriminatory hiring, but nevertheless represented a *possible future threat of discrimination* if the numerical membership of the two unions should change, and for that reason mandated a permanent injunction enjoining the continued operation of two segregated local unions. Based upon the minimal relief granted in this case, and only against the two unions, the district court and court of appeals were completely correct in concluding that the stevedoring companies including Ryan, could not be required to pay attorney's fees to the plaintiff since the plaintiff was not a "prevailing party". Thus, there is no necessity for this Court to grant a Writ of Certiorari in this case.

ARGUMENT

The district court and court of appeals were correct in holding that the plaintiff was not a "prevailing party" as to Ryan and was not entitled to any attorney's fees as against Ryan, and this case does not warrant the granting of a Writ of Certiorari. The relevant statutory provision for the court of appeals' consideration is §706(k) of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(k), which reads as follows:

> "In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person."

No relief whatsoever was granted against Ryan in this case. The plaintiff lost his individual claim of

discrimination. Further, the plaintiff did not have the requisites to qualify him as a representative for a class action. The only relief granted in the case was an order prohibiting the continued operation of the segregated local unions. Thus, plaintiff was not a "prevailing party" as to Ryan and is not entitled to recover attorney's fees from it. In *Thomas v. J. C. Penney Co., Inc.*, 531 F.2d 270 (5th Cir. 1976) the court held that a plaintiff who loses his or her case is not a "prevailing party" and cannot recover attorney's fees, whether or not the evidence justified prosecution of the action.

Williams v. New Orleans Steamship Association, 446 F.Supp. 662 (E.D. La. 1981), rev'd on other grounds, 673 F.2d 742 (5th Cir. 1982), was a case similar to this one. The plaintiff sued racially identifiable unions and several stevedoring companies in the Port of New Orleans. The district court initially dismissed the claims against the stevedoring companies, and ordered the unions to merge. While the case was in that posture, the issue of attorney's fees was presented. The plaintiffs acknowledged that they were not "prevailing parties" as to the stevedoring companies and the Court assessed attorney's fees against the unions only.

The district court in the instant case clearly recognized that fact when it stated:

> "named as defendants in the original suit were the unions and several stevedoring companies. *This court previously found that the stevedoring companies were not liable for attorney's fees since they had nothing to do with the operation of the unions and had no voice in determining whether there should be a merger of the unions. Furthermore, these companies were not guilty of any discrimination against the plaintiff* or the union. Thus, these companies cannot be required to pay

attorney's fees to the plaintiff whether plaintiff is a prevailing party or not." (Emphasis added). (R 646).

Additionally, the record demonstrated that Ryan ased all operations in the Port of Baton Rouge in May 9, some two years prior to the institution of this suit, and did not resume activities at anytime pertinent eto. For that additional reason the denial of an award of orney's fees against Ryan by the district court and the rt of appeals was correct.

CONCLUSION

Considering the decision of the district court and the rt of appeals, the entire record in this case, and the ap- able law, Ryan respectfully submits that the district rt's dismissal of plaintiff's claim for attorney's fees inst the stevedoring companies and the court of ap- s' affirmance of that dismissal was correct, and efore, the Petition for a Writ of Certiorari with respect he claims against Ryan Stevedoring Company, Inc. uld be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Defendant, Ryan-Walsh Stevedoring Company, Inc., has this day beem served, by mail, postage prepaid, upon all counsel of record.

Baton Rouge, Louisiana, this _____ day of June, 1987.

_____

Thomas E. Balhoff